

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
PINE BLUFF DIVISION**

RANDY MAYO  
ADC #134578

PLAINTIFF

V.

NO: 5:06CV00179 WRW/HDY

RICK TONEY *et al.*

DEFENDANTS

**PROPOSED FINDINGS AND RECOMMENDATIONS**

**INSTRUCTIONS**

The following recommended disposition has been sent to United States District Court Judge William R. Wilson, Jr. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The detail of any testimony desired to be introduced at the hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court  
Eastern District of Arkansas  
600 West Capitol Avenue, Suite 402  
Little Rock, AR 72201-3325

#### **DISPOSITION**

Plaintiff, an inmate at the East Arkansas Regional Unit, filed a *pro se* complaint (docket entry #2), pursuant to 42 U.S.C. § 1983, on July 3, 2006. On August 14, 2006, Defendants Nnamdi Ifediora and Donna Stone filed a motion to dismiss and brief in support (docket entries #9 & #10), alleging that Plaintiff had failed to exhaust his administrative remedies, and that his complaint failed to state a claim against them. Also on August 14, 2006, Defendants Rick Toney and G.B. Davis filed a motion to dismiss, asserting that Plaintiff's complaint failed to state a claim as to them, that the claim was barred by sovereign immunity, and that Plaintiff failed to exhaust his administrative remedies (docket entries #11 & #12). Ifediora and Stone filed a second motion to dismiss (docket entry #29), reiterating the same arguments made in their earlier motion, and also asserting that Plaintiff's complaint should be dismissed for failure to comply with this Court's orders to respond. Although Plaintiff has been granted multiple extensions of time in which to respond to the first two motions (docket entries #15, #19, and #27), he has failed to do so.

## **I. Standard of Review**

In evaluating a motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), the Court is mindful that a complaint should be dismissed for failure to state a claim only if it appears beyond doubt that a plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. *Springdale Educ. Ass'n v. Springdale Sch. Dist.*, 133 F.3d 649, 651 (8th Cir. 1998). The Court must accept the factual allegations in the complaint as true and hold a plaintiff's *pro se* complaint "to less stringent standards than formal pleadings drafted by lawyers. . . ." *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (*per curiam*).

## **II. Analysis**

Plaintiff's complaint indicates that certain staff members at the Jefferson County Jail/Correctional Facility ("JCJCF") of the ADC refused to honor his medical restrictions, and forced him to use stairs to board a bus to attend classes, which caused him pain because of a bad right knee. According to Plaintiff, he was also disciplined for missing school. Plaintiff further charges that if the medical staff at JCJCF had not been negligent in obtaining his previous medical records, he would not have been released to enroll in school in the first place.

### *A. Defendants Ifediora and Stone*

Ifediora and Stone assert that Plaintiff fails to state a claim against them, and that Plaintiff has failed to provide proof of exhaustion of his administrative remedies. Because Plaintiff has failed to state a claim against Ifediora and Stone, his claims against them should be dismissed, and they should be dismissed as party Defendants.

Although Plaintiff has made vague claims of wrongdoing against the "medical staff," he has failed to articulate any specific facts to indicate that Ifediora or Stone violated his constitutional rights. Indeed, other than being named as Defendants, neither Ifediora nor Stone are named in the

complaint. Accordingly, Plaintiff's claims against Ifediora and Stone should be dismissed, and they should be dismissed as party Defendants.

In light of this recommendation, the Court need not reach Defendants' argument that Plaintiff failed to exhaust his administrative remedies, or Ifediora's and Stone's second motion to dismiss (docket entry #29).

*B. Defendants Rick Toney and G.B. Davis*

As in the case of Plaintiff's claims against Ifediora and Stone, Plaintiff has failed to mention Toney or Davis anywhere in the complaint other than in the caption. Thus, Plaintiff's claims against Toney and Davis should also be dismissed, and the Court need not consider the other arguments advanced by Toney and Davis.

**III. Conclusion**

IT IS THEREFORE RECOMMENDED THAT:

1. The motion to dismiss filed by Ifediora and Stone (docket entry #9) be GRANTED, and Plaintiff's claims against Ifediora and Stone be DISMISSED WITHOUT PREJUDICE.
2. Ifediora and Stone's second motion to dismiss (docket entry #29) be DENIED AS MOOT.
3. The motion to dismissed filed by Toney and Davis (docket entry #11) be GRANTED, and Plaintiff's claims against Toney and David be DISMISSED WITHOUT PREJUDICE.
4. Plaintiff's complaint be DISMISSED WITHOUT PREJUDICE.

DATED this 20 day of November, 2006.



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UNITED STATES MAGISTRATE JUDGE